

# SENATE BILL 839

K3  
SB 484/18 – JPR

9lr2220  
CF 9lr2219

---

By: **Senator Carter**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Criminal Record Screening Practices**  
3 **(Ban the Box)**

4 FOR the purpose of authorizing the Commissioner of Labor and Industry to conduct an  
5 investigation to determine whether certain provisions of this Act have been violated  
6 on receipt of a certain written complaint; prohibiting certain employers from  
7 requiring an applicant for employment to disclose certain information regarding the  
8 criminal record of the applicant except under certain circumstances, conducting a  
9 certain criminal history records check, or taking certain other action before a  
10 conditional offer for employment has been extended; providing that certain  
11 provisions of this Act do not prohibit an employer from making a certain inquiry or  
12 taking certain other action; providing that certain provisions of this Act do not apply  
13 to certain employers; authorizing the Commissioner on a certain determination to  
14 resolve certain issues informally by mediation; authorizing the Commissioner to ask  
15 the Attorney General to bring a certain action on behalf of certain applicants under  
16 certain circumstances; authorizing the Attorney General to bring a certain action in  
17 a certain county under certain circumstances for injunctive relief, damages, or other  
18 relief; prohibiting employers from taking or refusing to take certain actions against  
19 certain applicants and employees under certain circumstances; establishing a  
20 certain penalty; defining certain terms; providing for a delayed effective date; and  
21 generally relating to criminal record screening practices of employers.

22 BY repealing and reenacting, with amendments,  
23 Article – Labor and Employment  
24 Section 3–103  
25 Annotated Code of Maryland  
26 (2016 Replacement Volume and 2018 Supplement)

27 BY adding to  
28 Article – Labor and Employment  
29 Section 3–1401 through 3–1406 to be under the new subtitle “Subtitle 14. Criminal

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 History Screening”  
2 Annotated Code of Maryland  
3 (2016 Replacement Volume and 2018 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
5 That the Laws of Maryland read as follows:

6 **Article – Labor and Employment**

7 3–103.

8 (a) Except as otherwise provided in this section, the Commissioner may conduct  
9 an investigation to determine whether a provision of this title has been violated on the  
10 Commissioner’s own initiative or may require a written complaint.

11 (b) The Commissioner may conduct an investigation under Subtitle 3 of this title,  
12 on the Commissioner’s own initiative or on receipt of a written complaint of an employee.

13 (c) The Commissioner may conduct an investigation to determine whether  
14 Subtitle 5 of this title has been violated on receipt of a written complaint of an employee.

15 (d) The Commissioner may conduct an investigation to determine whether  
16 Subtitle 6 of this title has been violated on receipt of a written complaint of a sales  
17 representative.

18 (e) (1) The Commissioner may investigate whether § 3–701 of this title has  
19 been violated on receipt of a written complaint of an applicant for employment.

20 (2) The Commissioner may investigate whether § 3–702 of this title has  
21 been violated on receipt of a written complaint of an applicant for employment or an  
22 employee.

23 (3) The Commissioner may investigate whether § 3–704 of this title has  
24 been violated on receipt of a written complaint of an employee.

25 (4) The Commissioner may investigate whether § 3–710 of this title has  
26 been violated on receipt of a written complaint of an employee as provided in § 3–710(d)(1)  
27 of this title.

28 (5) The Commissioner may investigate whether § 3–711 of this title has  
29 been violated on receipt of a written complaint of an employee as provided in § 3–711(d)(1)  
30 of this title.

31 (6) The Commissioner may investigate whether § 3–712 of this title has  
32 been violated on receipt of a written complaint of an employee or applicant.

33 (f) (1) The Commissioner may investigate whether § 3–801 of this title has

1 been violated on receipt of a written complaint of an employee.

2 (2) The Commissioner may investigate whether § 3-802 of this title has  
3 been violated on receipt of a written complaint of an employee.

4 (g) The Commissioner may investigate whether Subtitle 9 of this title has been  
5 violated:

6 (1) on the Commissioner's own initiative;

7 (2) on receipt of a written complaint signed by the person submitting the  
8 complaint; or

9 (3) on referral from another unit of State government.

10 (h) The Commissioner may conduct an investigation to determine whether  
11 Subtitle 10 of this title has been violated on receipt of a written complaint of an employee.

12 (i) The Commissioner may conduct an investigation to determine whether  
13 Subtitle 12 of this title has been violated on receipt of a written complaint of an employee.

14 **(J) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE**  
15 **WHETHER SUBTITLE 14 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A**  
16 **WRITTEN COMPLAINT OF AN APPLICANT OR EMPLOYEE.**

17 **[(j)] (K)** The Commissioner, on the Commissioner's own initiative or on receipt  
18 of a written complaint, may conduct an investigation of whether a local minimum wage law  
19 has been violated.

20 **[(k)] (L)** (1) The Commissioner may conduct an investigation to determine  
21 whether Subtitle 13 of this title has been violated on receipt of a written complaint by an  
22 employee.

23 (2) To the extent practicable, the Commissioner shall keep confidential the  
24 identity of an employee who has filed a written complaint alleging a violation of Subtitle 13  
25 of this title unless the employee waives confidentiality.

26 **SUBTITLE 14. CRIMINAL HISTORY SCREENING.**

27 **3-1401.**

28 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
29 **INDICATED.**

30 **(B) "CRIMINAL RECORD" MEANS:**

- 1           (1)    AN ARREST;
- 2           (2)    A PLEA OR VERDICT OF GUILTY;
- 3           (3)    A PLEA OF NOLO CONTENDERE;
- 4           (4)    A DISPOSITION OF PROBATION BEFORE JUDGMENT; OR
- 5           (5)    A DISPOSITION OF NOT CRIMINALLY RESPONSIBLE.

6           (C)   (1)    “EMPLOYER” MEANS A PERSON WHO EMPLOYS 15 OR MORE  
7 FULL-TIME EMPLOYEES.

8                   (2)    “EMPLOYER” INCLUDES A PERSON WHO ACTS, DIRECTLY OR  
9 INDIRECTLY, IN THE INTEREST OF AN EMPLOYER WITH RESPECT TO AN EMPLOYEE  
10 OF THE EMPLOYER.

11           (D)   (1)    “EMPLOYMENT” MEANS ANY WORK FOR PAY AND ANY FORM OF  
12 VOCATIONAL OR EDUCATIONAL TRAINING, WITH OR WITHOUT PAY.

13                   (2)    “EMPLOYMENT” INCLUDES:

14                           (I)    CONTRACTUAL, TEMPORARY, SEASONAL, OR CONTINGENT  
15 WORK; AND

16                           (II)   WORK THROUGH THE SERVICES OF A TEMPORARY OR  
17 OTHER EMPLOYMENT AGENCY.

18   **3-1402.**

19           **THIS SUBTITLE DOES NOT:**

20                   (1)    PROHIBIT AN EMPLOYER FROM MAKING AN INQUIRY OR TAKING  
21 OTHER ACTION THAT THE EMPLOYER IS REQUIRED TO TAKE OR IS EXPRESSLY  
22 AUTHORIZED TO TAKE BY ANOTHER APPLICABLE FEDERAL, STATE, OR LOCAL LAW;  
23 OR

24                   (2)    APPLY TO AN EMPLOYER THAT PROVIDES PROGRAMS, SERVICES,  
25 OR DIRECT CARE TO MINORS OR TO VULNERABLE ADULTS.

26   **3-1403.**

27           (A)    AN EMPLOYER MAY NOT, AT ANY TIME BEFORE A CONDITIONAL OFFER

1 OF EMPLOYMENT HAS BEEN EXTENDED:

2 (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,  
3 REQUIRE AN APPLICANT TO DISCLOSE WHETHER THE APPLICANT HAS A CRIMINAL  
4 RECORD OR HAS HAD CRIMINAL ACCUSATIONS BROUGHT AGAINST THE APPLICANT;

5 (2) CONDUCT A CRIMINAL HISTORY RECORDS CHECK ON THE  
6 APPLICANT; OR

7 (3) OTHERWISE INQUIRE OF THE APPLICANT OR OTHERS ABOUT  
8 WHETHER THE APPLICANT HAS A CRIMINAL RECORD OR HAS HAD CRIMINAL  
9 ACCUSATIONS BROUGHT AGAINST THE APPLICANT.

10 (B) AN EMPLOYER MAY REQUIRE AN APPLICANT TO DISCLOSE DURING THE  
11 FIRST IN-PERSON INTERVIEW WITH THE APPLICANT WHETHER THE APPLICANT HAS  
12 A CRIMINAL RECORD OR HAS HAD CRIMINAL ACCUSATIONS BROUGHT AGAINST THE  
13 APPLICANT.

14 3-1404.

15 (A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE  
16 HAS BEEN VIOLATED, THE COMMISSIONER MAY:

17 (1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION  
18 INFORMALLY BY MEDIATION; OR

19 (2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF  
20 OF THE APPLICANT OR EMPLOYEE.

21 (B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS SECTION  
22 IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED, FOR INJUNCTIVE  
23 RELIEF, DAMAGES, OR OTHER RELIEF.

24 3-1405.

25 AN EMPLOYER MAY NOT TAKE OR REFUSE TO TAKE A PERSONNEL ACTION OR  
26 OTHERWISE RETALIATE OR DISCRIMINATE AGAINST AN APPLICANT OR EMPLOYEE  
27 AS A REPRISAL FOR THE APPLICANT OR EMPLOYEE HAVING CLAIMED A VIOLATION  
28 OF THIS SUBTITLE.

29 3-1406.

30 AN EMPLOYER WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY

1 OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING  
2 \$500 OR IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR BOTH FOR EACH  
3 VIOLATION.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 January 1, 2020.